

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

RECEIVED

2007 DEC 27 P 4:45

BRASFIELD & GORRIE, LLC, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No.: 3:07cv1130-CSC  
 )  
 RUSSELL COUNTY COMMUNITY )  
 HOSPITAL, LLC, et al., )  
 )  
 Defendants. )

DEBRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

**NOTICE OF REMOVAL**

Defendant Alphonso Jackson in his official capacity as Secretary of HUD, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, respectfully petitions for removal of this action from the Circuit Court of Russell County, Alabama, to the United States District Court for this District, and in support thereof, represent the following:

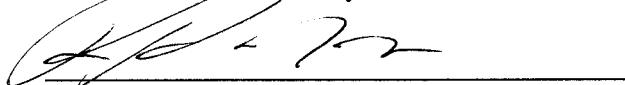
1. That Defendant, Jackson, is a named Defendant in the above-captioned civil action which is pending in the Circuit Court of Russell County, Alabama, Civil Action No. CV-07-309. Copies of all process, pleadings, and orders served upon Defendants in such action are attached hereto.
2. That the above-captioned action is one which may be removed without bond to this court pursuant to 28 U.S.C. §§ 1442(a)(1), 1444, and 2410(a), for the reasons that Defendant Jackson is a federal official being sued in his official capacity for an act taken under color of his office and that this lawsuit affects property on which the United

States has a security interest.

WHEREFORE, Petitioner prays that said action be removed from the Circuit Court of Russell County, Alabama.

DATED this 27<sup>th</sup> day of December, 2007.

LEURA G. CANARY  
United States Attorney

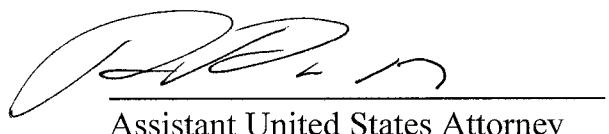


R. RANDOLPH NEELEY  
Assistant United States Attorney  
Bar Number: 9083-E56R  
Post Office Box 197  
Montgomery, AL 36101-0197  
Telephone No.: (334) 223-7280  
Facsimile No.: (334) 223-7418  
E-mail: [Rand.Neeley@usdoj.gov](mailto:Rand.Neeley@usdoj.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on December 27, 2007, I filed the foregoing with the Clerk of the Court, and I hereby certify that I have mailed, by United States Postal Service, a copy of same to the following:

Axel Bolvig  
Bradley Arant Rose & White, LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, AL 35203-2119

  
Assistant United States Attorney

**CT CORPORATION**  
A WoltersKluwer Company

**Service of Process**

**Transmittal**

11/28/2007

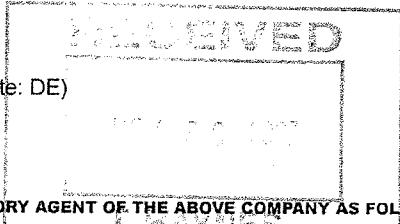
CT Log Number 512829578



**TO:** Christine Gillen  
The Prudential Insurance Company of America  
Legal Department, 751 Broad St, 4th Floor  
Newark, NJ 07102

**RE:** **Process Served in Alabama**

**FOR:** Prudential Huntoon Paige Associates Ltd. (Domestic State: DE)



**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Brasfield & Gorrie, LLC, Pltf. vs. Russell County Community Hospital, LLC, et al.  
including Prudential Huntoon Paige Associates, Ltd., Dfts.

**DOCUMENT(S) SERVED:** Summons, Complaint, Exhibit

**COURT/AGENCY:** Russell County Circuit Court, AL  
Case # CV 07 309

**NATURE OF ACTION:** Monies Due and Owing - Services Rendered - Amount - \$590,778.47

**ON WHOM PROCESS WAS SERVED:** The Corporation Company, Montgomery, AL

**DATE AND HOUR OF SERVICE:** By Certified Mail on 11/28/2007 postmarked on 11/21/2007

**APPEARANCE OR ANSWER DUE:** Within 30 days

**ATTORNEY(S) / SENDER(S):**  
Axel Bolvig  
Bradley Arant Rose & White LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, AL 35203-2119  
205-521-8000

**ACTION ITEMS:**  
SOP Papers with Transmittal, via Fed Ex 2 Day , 790882981008  
Email Notification, Legal Process Unit legal.process.unit@prudential.com

**SIGNED:**  
**ADDRESS:** The Corporation Company  
2000 Interstate Park Drive  
Suite 204

**TELEPHONE:** Montgomery, AL 36109  
334-387-7680

Page 1 of 1 / CH

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

AVSO300

ALABAMA JUDICIAL DATA CENTER  
RUSSELL COUNTY

## SUMMONS

CV 2007 000309.00  
ALBERT L. JOHNSON

IN THE CIRCUIT COURT OF RUSSELL COUNTY  
 BRASFIELD & GORRIE, LLC VS RUSSELL COUNTY COMMUNITY HOSPITAL, LLC  
 SERVE ON: (D002)

## PLAINTIFF'S ATTORNEY

PRUDENTIAL HUNTOON PAIGE ASSOC  
 THE CORPORATION COMPANY  
 2000 INTER PK DR STE 204  
 MONTGOMERY, AL 36109-0000

BOLVIG AXEL III  
 BRADLEY ARANT ROSE WHITE  
 1819 FIFTH AVENUE, NORTH  
 BIRMINGHAM, AL 35203-2104

## TO THE ABOVE NAMED DEFENDANT:

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS, YOU OR YOUR ATTORNEY ARE REQUIRED TO MAIL OR HAND DELIVER A COPY OF A WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT TO THE PLAINTIFFS ATTORNEY(S) SHOWN ABOVE OR ATTACHED:

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGEMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. YOU MUST ALSO FILE THE ORIGINAL OF YOUR ANSWER WITH THE COURT BELOW.

TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY EITHER RULES 4.1(B)(2) OR 4.2(B)(2) OR 4.4(B)(2) OF THE ALABAMA RULES OF CIVIL PROCEDURE: YOU ARE HEREBY COMMANDED TO SERVE THIS SUMMONS AND A COPY OF THE COMPLAINT IN THIS ACTION UPON DEFENDANT.

THIS SERVICE BY CERTIFIED MAIL OF THIS SUMMONS IS INITIATED UPON THE WRITTEN REQUEST OF Plaintiff PURSUANT TO RULE 4.1(C) OF THE ALABAMA RULES OF CIVIL PROCEDURE.

DATE: 11/26/2007

CLERK: KATHY COULTER  
 PO BOX 518  
 PHENIX CITY AL 36868-0516  
 (334) 298-0516

BY: 

## RETURN ON SERVICE:

CERTIFIED MAIL RETURN RECEIPT IN THIS OFFICE ON (DATE) \_\_\_\_\_  
 (RETURN RECEIPT HERETO ATTACHED)

I CERTIFY THAT I PERSONALLY DELIVERED A COPY OF THE SUMMONS AND COMPLAINT TO \_\_\_\_\_

IN \_\_\_\_\_ COUNTY, ALABAMA ON (DATE) \_\_\_\_\_

DATE

SERVER SIGNATURE

SERVER ADDRESS

TYPE OF PROCESS SERVER

OPERATOR: JBC  
 PREPARED: 11/26/2007

IN THE CIRCUIT COURT FOR RUSSELL COUNTY, ALABAMA

BRASFIELD & GORRIE, LLC

Plaintiff,

v.

RUSSELL COUNTY COMMUNITY  
HOSPITAL, LLC; PRUDENTIAL  
HUNTOON PAIGE ASSOCIATES, LTD.;  
ALPHONSO JACKSON, in his Official  
Capacity as, SECRETARY OF THE  
UNITED STATES DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT.

Defendants.

THIS DOCUMENT  
PREPARED BY  
PLAINTIFF OR  
PLAINTIFF'S ATTORNEY

CIVIL ACTION NUMBER:

QJ 07- 309

U.S. DIST. COURT  
RUSSELL CO. ALA.

12/21/07 PM 1:52

COMPLAINT

For its complaint against Russell County Community Hospital, LLC (“Russell”), Prudential Huntoon Paige Associates, Ltd. (“Prudential”), and Alphonso Jackson (“Jackson”), in his official capacity as Secretary of the United States Department of Housing and Urban Development (“HUD”), Brasfield & Gorrie, LLC (“Brasfield & Gorrie”), states as follows:

1. Brasfield & Gorrie is limited liability company organized under the laws of the state of Delaware and registered to do business in Alabama.
2. Defendant Russell is an Alabama limited liability company having its principal place of business in Russell County, Alabama.
3. Prudential is a business entity organized under the laws of the state of Delaware and is authorized to do business in Alabama.

4. Jackson is the Secretary of HUD and is named as a defendant in this action in his official capacity as the head of HUD. HUD is headquartered in Washington, DC and is an executive department of the Federal Government of the United States of America. As the head of HUD, Jackson directs, approves, and/or is responsible for all official actions at HUD.

5. Russell is the owner of the property upon which the Russell County Community Hospital, also known as Summit Hospital, (the "Hospital") is located.

6. Prudential provided funding to Russell for the construction of the Hospital and holds a mortgage on the Hospital and the property upon which the Hospital is located.

7. Jackson holds a security interest in the Hospital and the land upon which the Hospital is situated by virtue of federal participating funds or loan guarantees.

8. The Hospital is located in Russell County, Alabama, and a legal description of the property upon which the Hospital is located is provided in Exhibit "A" to Exhibit "1" which is attached hereto and incorporated herein by reference.

9. On March 22, 2005, Brasfield & Gorrie entered into a Construction Agreement (the "Agreement") with Russell to provide construction services for construction of the Hospital.

10. Through the course of construction, Brasfield & Gorrie invoiced Russell for the amounts due pursuant to the Agreement. Russell paid Brasfield & Gorrie for a portion of the services provided, but an amount of \$590,778.47, plus interest, remains outstanding and due to be paid to Brasfield & Gorrie.

**COUNT I- Breach of Contract**

11. Brasfield & Gorrie incorporates the allegations contained in the preceding paragraphs, and further alleges that:

12. Brasfield & Gorrie entered into the Agreement with Russell to provide construction services for construction of the Hospital.

13. Brasfield & Gorrie has fulfilled all of its obligations and complied with all conditions precedent under the Agreement. Any obligations not performed or conditions precedent not complied with have been waived, excused or made impossible by Russell.

14. Brasfield & Gorrie has invoiced Russell for its work on the Hospital. Russell has paid Brasfield & Gorrie for a portion of its work, but an amount of \$590,778.47 remains outstanding and due to be paid to Brasfield & Gorrie.

15. Russell breached the Agreement by failing to make payment in the amount of \$590,778.47 to Brasfield & Gorrie, as required by the Agreement.

WHEREFORE, Brasfield & Gorrie demands judgment against Russell in an amount not less than \$590,778.47, plus interest, attorneys' fees, and costs, and such other, further and different relief at law, in equity or otherwise as may be just and proper.

#### **COUNT II – Mechanic's Lien**

16. Brasfield & Gorrie incorporates the allegations contained in the preceding paragraphs, and further alleges that:

17. On October 5, 2007, Brasfield & Gorrie filed in the Office of Probate Judge of Russell County a Verified Statement of Lien against the Hospital and the property on which the Hospital is located, in complete accordance with the requirements of the Alabama mechanic's lien statute, Alabama Code § 35-11-210, et seq. A true and correct copy of Brasfield & Gorrie's Verified Statement of Lien is attached hereto as Exhibit "1".

18. All requirements and conditions to perfection of said lien have been satisfied.

19. Brasfield & Gorrie is entitled to an order perfecting its mechanic's lien on the subject property and directing that the property be sold in satisfaction of the amounts owed it.

WHEREFORE, Brasfield & Gorrie requests that this Court enter an Order perfecting Brasfield & Gorrie's mechanic's lien on the property, ordering that the property be sold in satisfaction of the amounts owed to Brasfield & Gorrie, and granting such other, further and different relief at law, in equity or otherwise as may be just and proper.

Respectfully submitted,



Axel Bolvig (BOL033)  
Edward J. Everitt (EVE011)  
Attorneys for Plaintiff  
Brasfield & Gorrie, LLC

OF COUNSEL:

BRADLEY ARANT ROSE & WHITE LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, Alabama 35203-2119  
Telephone: (205) 521-8000  
Facsimile: (205) 521-8800

PLAINTIFF'S ADDRESS:

Brasfield & Gorrie, LLC  
3021 7<sup>th</sup> Avenue South  
Birmingham, AL 35233

DEFENDANTS TO BE SERVED BY CERTIFIED MAIL AT:

Russell County Community Hospital, LLC  
c/o Registered Agent  
CSC-Lawyers Incorporating SVC, Inc.  
150 S. Perry Street  
Montgomery, AL 36104

Prudential Huntoon Paige Associates, Ltd.  
c/o Registered Agent  
The Corporation Company  
2000 Interstate Park Drive, Suite 204  
Montgomery, AL 36109

Alphonso Jackson, in his Official Capacity as,  
Secretary of the United States Department of Housing and Urban Development  
c/o The Associate General Counsel for Litigation  
Office of Litigation - Room 10258  
U.S. Department of Housing and Urban Development  
451 Seventh Street, S.W.  
Washington, D.C. 20410

Alphonso Jackson, in his Official Capacity as,  
Secretary of the United States Department of Housing and Urban Development  
c/o Leura G. Canary  
United States Attorney for the Middle District of Alabama  
131 Clayton Street  
Montgomery, Alabama 36104

Alphonso Jackson, in his Official Capacity as,  
Secretary of the United States Department of Housing and Urban Development  
c/o United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

## STATEMENT OF LIEN

STATE OF ALABAMA  
JEFFERSON COUNTY )  
 )

BRASFIELD & GORRIE, LLC files this statement in writing, verified by the oath of Alan Anthony, its Vice President, Medical Division Manager, who has personal knowledge of the facts herein set forth:

That said BRASFIELD & GORRIE, LLC claims a lien upon following real property, situated in Phenix City, Russell County, Alabama, to wit:

Summit Hospital  
4401 Riverchase Drive  
Phenix City, Alabama 36867

the legal description of which may be found in the Office of Judge of Probate, Russell County, at Deed Vol. 1026, Page 155, a copy of which is attached hereto as Exhibit A.

This lien is claimed, separately and severally, as to the land, buildings and improvements thereon to the extent of the entire lot or parcel which is contained within a city or town. If said land is not within a city or town, this lien is claimed, separately and severally, as to the buildings and improvements located on the above-described real property, plus one acre of land surrounding and contiguous thereto.

That said lien is claimed to secure an indebtedness, after all just credits have been given, of \$590,778.47 with interest from 29 day of May, 2007, for work performed in connection with the construction of Summit Hospital.

The name of the owner or proprietor of the said property is Russell County Community Hospital, LLC. The work was performed by BRASFIELD & GORRIE, LLC for Russell County Community Hospital, LLC pursuant to a contract dated March 22, 2005.

By: Alan Anthony  
Alan Anthony

Its: Vice President, Medical Division Manager

Date: October 4, 2007

INDEX	REC FEE	\$5.00
CERT		\$0.00
CASH TOTAL		\$14.00
12080		

Clerk: JANITA 11:32AM

STATE OF ALA.  
RUSSELL CO.  
I CERTIFY THIS INSTRUMENT  
WAS FILED ON  
JUDG 00066 PG 0326-0328 2007 Oct 05  
11:32AM  
Afford M. Harden Jr.  
JUDGE OF PROBATE



STATE OF ALABAMA )  
: )  
JEFFERSON COUNTY )

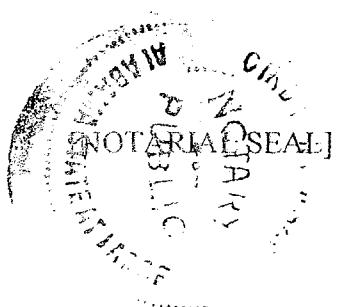
I, the undersigned, a notary public in and for said county in said state, hereby certify that Alan Anthony, whose name as Vice President, Medical Division Manager of Brasfield & Gorrie, LLC, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, with full authority, executed the same voluntarily for and as the act of Brasfield & Gorrie, LLC.

Given under my hand and official seal this 4th day of October, 2007.

*Cindy M. Maze*

Notary Public  
Cindy M. Maze

My commission expires: 4-07-10



OCT-02-2007 TUE 11:20 AM

PROBATE

FAX No. 8347055082

P.009

DEED vol 1026 pg 155

**EXHIBIT A****Deed Description****Phenix City Land, LLC Property****Portion of North Half of the SE 1/4 of the SE 1/4 of Section 34, T18N, R30E &****Portion of North Half of the SW 1/4 of the SW 1/4 of Section 35, T18N, R30E****4401 River Chase Drive, Phenix City, Russell County, Alabama****All of Deed Book 989, Page 71****Office of the Judge of Probate of Russell County, Alabama**

Being a certain tract or parcel of land lying in the North Half of the SE 1/4 of the SE 1/4 of Section 34, T18N, R30E and lying in the North Half of the SW 1/4 of the SW 1/4 of Section 35, T18N, R30E and being more particularly described as follows:

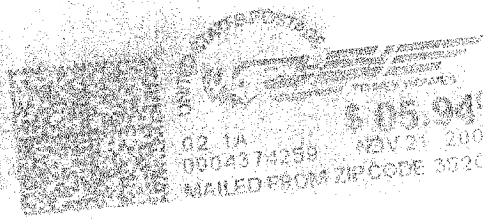
Beginning on a 5/8" rebar set with cap #24547 (State Plane Coordinates: N 732122.712, E 910862.807) in the southwest right-of-way of Fifth Avenue (ROW varies), said point being located N 52°01'34" E 2241.35' from the NW corner of the SE 1/4 of the SE 1/4 of Section 34, T18N, R30E and being the southeast corner of the lands of Georgia Power (1907/206) and the northemmost corner of the property described herein; thence, leaving the lands of Georgia Power and running with the southwest right-of-way of Fifth Avenue for two(2) calls as follows: S 44°03'08" E 257.63' to a concrete right-of-way monument found; thence, S 54°27'43" E 206.22' to a concrete right-of-way monument found at the beginning of a curve (Radius = 1420.00'; Delta = 02°03'38") to the right; thence, continuing with said right-of-way a chord bearing and distance of S 39°10'31" E 51.06' to a 5/8" rebar set with cap #24547 (State Plane Coordinates: N 731775.948, E 911239.166) in said right-of-way, said point being a corner with the lands of Girard Partners, LP (811/205) and the easternmost corner of the property described herein; thence, leaving said right-of-way and running with the lands of Girard Partners, LP for four(4) calls as follows: S 51°14'05" W 1341.77' to a 5/8" rebar set with cap #24547; S 89°54'23" W 108.99' to a 5/8" rebar set with cap #24547; N 38°48'23" W 436.96' to a 5/8" rebar set with cap #24547; thence, N 51°11'37" E 1350.84' to the point of beginning and containing 16.005 acres by survey. Actual field survey performed by James E. Helton, Helton & Associates, P. O. Box 2533, Cookeville, Tennessee 38502 on August 4, 2003.

Being the same property as conveyed to Phenix City Land, LLC from Girard Partners, LP as of record in Book 989, Page 71 of the Office of Probate Judge of Russell County, Phenix City, Alabama which is the previous and last conveyance.

Russell County Circuit Court  
P.O. Box 518  
Phenix City, AL 36868-0518



7087 1490 0004 0136 8516



RETURN RECEIPT  
REQUESTED

Prudential Huntoon Paige Associates, Ltd.  
c/o Registered Agent  
The Corporation Company  
2000 Interstate Park Drive, Suite 204  
Montgomery, AL 36109